

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

<i>In the Matter of</i>)	
)	
Federal-State Joint Board on Universal)	CC Docket No. 96-45
Service)	
)	
TO: The Federal-State Joint Board)	

COMMENTS OF NEXTEL PARTNERS, INC.

Filed by:

NEXTEL PARTNERS, INC.

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October 15, 2004

SUMMARY

The designation of wireless service providers as ETCs is a necessary component of the effort to bring to rural citizens the same types of modern telecommunications services available in urban areas, at reasonably comparable rates. While the Universal Service Fund (USF) is growing, only a very small portion of high-cost support payments—less than 7%—are going to wireless ETCs; more than 93% of USF high-cost support payments in rural areas continues to go to incumbent wireline LECs. The designation of wireless providers is not threatening the viability of the USF.

The existing modified embedded cost support methodology was developed through the efforts of the Rural Task Force. Nextel Partners urges the Commission and Joint Board to establish a new Rural Task Force for the purpose of developing a new rural high-cost support methodology to succeed the existing support structure after its expiration in June 2006. The New Task Force should be representative of both wireline and wireless carriers and should be guided by the following principles in developing a new support methodology:

- a. Mobile telecommunications services meet unique public interest needs of rural citizens and USF policies and payments should be designed to promote the continued growth of spectrum-based services in these areas;
- b. USF high-cost support payments should be technologically neutral in order to promote investment in infrastructure and the buildout of rural networks;
- c. Growth of the Fund must be managed on a long-term basis by addressing the root causes for the growth in the Fund.

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Nextel Partners, Inc. (“Nextel Partners”), by undersigned counsel, submits these comments in response the August 16, 2004 Public Notice requesting comments on certain of the Commission’s rules relating to high-cost universal service support.¹ In the *Public Notice* the Joint Board requests comments on the appropriate high-cost universal support mechanisms to succeed the modified embedded cost support mechanisms for rural carriers currently in place through June 2006.²

As discussed herein, Nextel Partners believes that a Rural Task Force should be appointed composed of representatives from both the wireline and wireless industries, that will undertake a comprehensive analysis and provide recommendations to resolve the many issues raised in the *Public Notice*. Nextel Partners urges that this task force be guided by the following principles:

- (1) Mobile telecommunications services meet unique public interest needs of rural citizens,³ and Universal Support Fund (USF) support must be designed to promote

¹ *Public Notice, Federal-State Joint Board on Universal Service Seeks Comment on Certain of the Commission’s Rules Relating to High-Cost Universal Service Support*, CC Docket No. 96-45, FCC 04J-2, August 16, 2004 (hereafter, “*Public Notice*”).

² See *Public Notice* at ¶¶ 4-5.

³ See Statement of Chairman Powell, *Federal-State Joint Board on Universal Service, Virginia Cellular, LLC Petition For Designation as an Eligible Telecommunications*

investment in mobile infrastructure and expansion of wireless services in rural areas;

- (2) USF high-cost support payments should be technologically neutral in order to promote investment in infrastructure and the buildout of rural networks;⁴
- (3) Growth of the Fund must be managed on a long-term basis by addressing the root causes for the growth in the Fund.

These guiding principles are designed to bring the many public interest benefits of state-of-the-art wireless service to rural citizens without an excessive long-term burden on the USF. While work is ongoing to develop a new support methodology, support payments to all rural ETCs should continue to be based on the existing methodology, with portability of support payments to competitive ETCs (CETCs) based on the per-line support payment amount made to incumbent ETCs (IETCs).

I. Nextel Partners is Committed to Serving Rural Citizens and this Commitment Gives it a Strong Interest in this Proceeding.

Nextel Partners has a compelling interest in this proceeding because its business focuses on bringing state-of-the-art digital mobile communications services to smaller, rural markets including, high-cost and insular areas. Nextel Partners was formed in 1999 as a joint venture with Nextel Communications, Inc. (“Nextel Communications”) specifically for the purpose of accelerating the deployment of service to those areas outside of the major urban markets, which have been built out and are operated by Nextel

Carrier for the Commonwealth of Virginia, Memorandum Opinion and Order, CC Docket No. 96-45, 19 FCC Rcd 1563 (2004) (“*Virginia Cellular*”) (“We recognize the unique value that mobile services provide to rural consumers....”)

⁴ See *Federal-State Joint Board on Universal Service*, Ninth Report & Order, 14 FCC Rcd 20432 (1999), at ¶ 90, where the Commission recognized the “competitive harm that could be caused by providing unequal support amounts to incumbents and competitors.”

Communications.⁵ Nextel Partners' highly successful relationship with Nextel Communications provides unique benefits to these secondary and tertiary markets. The relationship seamlessly extends the national reach and power of Nextel's nationwide network into these remote markets providing customers in places like Dothan, Alabama with the same advanced Nextel products and services at substantially the same prices as are available in urban markets like Atlanta, Georgia.

When it was founded in January of 1999, Nextel Partners served fewer than 50,000 customers in just two operating markets. In less than six years, the company has built out its system in over 30 states covering more than 39 million people and now has more than 1.4 million customers. To reach these milestones, Nextel Partners has constructed over 3,800 cell sites, the vast majority of which provide coverage in second and third tier cities and rural corridors throughout the United States. With its rapid build out, Nextel Partners has not lost sight of its core business philosophy: strive for 100% customer satisfaction. In addition to providing customers with greater communications options, Nextel Partners has raised the bar with respect to customer satisfaction. Nextel Partners' 1.4% churn rate for the second quarter of 2004 was the lowest churn rate reported by all wireless carriers including the six largest carriers.

The Nextel Partners – Nextel Communication relationship has provided proven benefits to customers in rural areas. Nextel Partners not only deploys the same technology used by Nextel Communications in urban areas, but must also maintain the same high level of network performance and customer service standards that have made Nextel Communications successful in urban areas. As a result, all of Nextel Partners'

⁵ Nextel Partners and Nextel Communications are separate publicly-held companies, traded on the NASDAQ exchange.

customers, even those in the most rural parts of its coverage territory, receive the same service benefits available to urban citizens, including: access to a fully digital nationwide network; national and international Direct Connect service (push-to-talk) which allows for cheaper and faster communications; wireless access to the Web; interoperability for public safety; mobility; larger local calling areas; location based technologies; and E911 service and emergency communications. Moreover, all of these services are provided at substantially the same rates as provided by Nextel Communications in its urban markets and with no roaming charges. Today, for example, a Nextel Partners' customer in Bosco, Louisiana can use Nextel's unique walkie-talkie service to reach instantly a Nextel customer in Los Angeles, Washington, D.C. and even internationally in, for example, Buenos Aires, Argentina. Equally important, Nextel Partners, as a wireless carrier, brings to rural citizens, in many cases for the first time, the benefit of customer choice that serves as both a compliment and option to wireline telephone service.

Nextel Partners' business focus fits squarely within the mission of universal service. Accordingly, over the past two years, the company has pursued and obtained designation as an eligible telecommunications carrier (ETC) in 14 states, and is drawing Universal Service high-cost support.⁶ As a publicly traded and publicly financed company in the competitive wireless industry, Nextel Partners, like other wireless

⁶ See *Federal-State Joint Board on Universal Service, NPCR, Inc. d/b/a Nextel Partners Petitions For Designation as an Eligible Telecommunications Carrier in the States of Alabama, Florida, Georgia, Pennsylvania, Tennessee, and Virginia, Nextel Partners of Upstate New York, Inc. d/b/a Nextel Partners Petition For Designation as an Eligible Telecommunications Carrier in the State of New York*, 19 FCC Rcd 16530 (2004) (hereafter, "*Nextel Partners Designation Order*"), amended by *Erratum* dated September 13, 2004, 2004 FCC Lexis 5271, in which the FCC granted ETC designation to Nextel Partners in these seven states. Nextel Partners also has been designated as an ETC by state commissions in Arkansas, Hawaii, Indiana, Iowa, Louisiana, Mississippi and Wisconsin.

carriers, must be able to justify its sizeable capital expenditure investments in infrastructure deployment in rural areas based on projected returns on investment. In this sense Nextel Partners is different from the government sanctioned, guaranteed rate of return utilities like the incumbent wireline carriers. Given the low population density in the high-cost areas served by Nextel Partners, the expected return on investment, even with universal service support, can be as long as two years or more. Moreover, unlike the wireline monopolies who receive Universal Service Support based on their embedded costs regardless of the number of customers they actually serve, Nextel Partners does not receive any Universal Service support unless and until it acquires customers. Therefore, wireless carriers like Nextel Partners that actively seek ways to justify expansion of their network into rural areas face far greater risk than their landline counterparts even if they have been granted ETC status.

Nevertheless, the support Nextel Partners is now receiving is having a positive effect on facilitating the continued build out of its system in rural areas. In several instances, the expected universal service support, although not guaranteed as with wireline carriers, is the differentiating factor that provides a bare minimum return on investment to justify expansion of the network into these remote areas. In order to continue the successful expansion of state-of-the-art wireless technologies like the services offered by Nextel Partners into more and more rural areas, USF high-cost support payments must remain technologically neutral.

II. The Designation of Wireless ETCs is Consistent With the Congressional Mandate for USF.

CETCs are for the most part spectrum-based carriers like Nextel Partners. They bring important and unique benefits that foster the goals of Universal Service. These

benefits include competitive alternatives for customers, pricing plans with expanded local calling areas and reduced rate or flat-rated long distance calling. Other benefits include wireless coverage that makes a rural area an attractive location for corporate or industrial relocation, and for urban visitors who wish to maintain the everyday communications abilities that they are accustomed to and depend upon. Benefits also include a mobile communications service that addresses significant health and safety concerns left unaddressed by the incumbents. In particular, wireless coverage serves critical homeland security concerns, as it brings to rural areas the critical coverage capacity and interoperability that may be needed in the event of an influx of citizens from urban areas during a national emergency.

These numerous benefits are fully consistent with the goals of Universal Service as defined in the Communications Act. Congress did not create the Universal Service program simply to perpetuate the existing service by existing incumbent carriers. The objective is to open all markets to competition and to bring modern state-of-the-art communications and information services to all such markets, including rural areas. Thus, the Communications Act provides that,

Consumers in all regions of the Nation, including low-income consumers and those in rural, insular, and high-cost areas, should have access to telecommunications and information services, including interexchange services and advanced telecommunications and information services, that are reasonably comparable to those services provide in urban areas and that are available at rates that are reasonably comparable to rates charged for similar services in urban areas.⁷

⁷ 47 U.S.C. § 254 (b) (3).

The requirements of the Act and the widespread deployment and dependence upon spectrum-based communications in urban areas requires that wireless ETCs serving rural areas must be designated and supported as part of the Universal Service program.

Recent designations by the FCC of wireless CETCs are fully in accord with this focus of the Universal Service program. In the *Virginia Cellular* decision the Commission found that mobility in telecommunications brings important public interest benefits to rural citizens, as it “assists consumers in rural areas who often must drive significant distances to places of employment, stores, schools, and other critical community locations [and] provides access to emergency services that can mitigate the unique risks of geographic isolation associated with living in rural communities.”⁸ Similarly, the Commission emphasized these same public interest benefits in designating Nextel Partners as a CETC.⁹ Indeed, as the Commission recently indicated, facilitating the widespread deployment of such services “to all Americans, including those doing business in, residing in, or visiting rural areas,” is “[o]ne of the Commission’s primary statutory obligations, as well as one of its principal public policy objectives.”¹⁰ The designation of CETCs helps to meet these fundamental goals of Congress and the Act.

⁸ See *Virginia Cellular* at ¶ 29.

⁹ See *Nextel Partners Designation Order*, at ¶ 18.

¹⁰ See *Facilitating the Provision of Spectrum-Based Services to Rural Areas and Promoting Opportunities for Rural Telephone Companies to Provide Spectrum-Based Services; 2000 Biennial Regulatory Review Spectrum Aggregation Limits for Commercial Mobile Radio Services; Increasing Flexibility to Promote Access to and the Efficient and Intensive Use of Spectrum and the Widespread Deployment of Wireless Services, and to Facilitate Capital Formation*, Report and Order and Further Notice of Proposed Rulemaking, WT Dockets No. 02-381, 01-14 and 03-202, at ¶ 4 (rel. September 27, 2004).

III. The Challenge is to Create Support Mechanisms that are Equitable for All ETCs and do Not Favor One Technology over Another, While Still Protecting the Long-Term Viability of the USF.

The long-term challenge that must now be met is to develop fair, equitable, technology-neutral methodologies for access to USF support that are consistent with Congress' goals and that neither deplete the Fund nor overly burden those paying into the Fund.¹¹ Whatever changes are made to the current support mechanism, they should be done so in a manner that does not favor one class of ETC or one type of technology over another. Short sighted policies that discriminate against wireless carriers and state-of-the-art technologies will undermine the Congressional goals of bringing to rural areas the same telecommunications services as are available to citizens of urban areas.

While wireless carriers have legitimately begun to draw support from the Fund, they are not causing a depletion of the Fund. In fact, despite the IETCs loud assertions to the contrary, the wireless carriers have had an almost diminimus impact on the Fund. In its most recent report analyzing the Fund, the Joint Board's staff projected that on a nationwide basis, during 2004, ILECs would collect \$3.21 billion of the \$3.45 billion in high-cost support, or 93% of all funding.¹² Support to CETCs remains a very small percentage of the Fund.¹³ The major source of Fund growth arises directly from the

¹¹ While Nextel Partners receives USF support in 14 states, Nextel Partners remains a net payer into the Fund, paying more than \$12 million each year.

¹² See *Universal Service Monitoring Report*, CC Docket 98-202, 2004 (Data Received Through May 2004), Prepared by Federal and State Staff for the Federal-State Joint Board on Universal Service in CC Docket No. 96-45, at pg. 3-15, Table 3.2 and Chart 3.2, and pg. 3-27, Table 3.14.

¹³ USF High-Cost support paid to wireless carriers during 2003 was approximately \$126 million, out of a High-Cost support total of approximately \$3.3 billion, or only 4% of the total High-Cost payments. Total support of all types paid to wireless carriers was approximately \$175 million out of overall 2003 USF payments of more than \$5.6 billion,

existing embedded cost support methodologies that were adopted for rural areas. And while wireless ETCs are receiving only a very small percentage of support, wireless providers are making approximately 27% of all contribution payments to the USF.

While some change in support methodology needs to occur to keep in check long-term growth of the Fund, this change should not come at the cost of denying rural consumers access to new or innovative wireless technologies. Limiting CETC's access to the Fund will not only frustrate Congress' stated intent in creating the Fund, but will not provide any meaningful, long-term solution to the growth of the Fund. Developing a new methodology will require careful examination of various models for both IETC and CETC support should be developed. From that information a balanced, technologically-neutral methodology that supports Congress' intent and provides a real, long-term solution to the growth of the Fund.

IV. A Rural Task Force Should be Created to Develop a Support Methodology.

In developing the existing support methodology, the Commission established a Rural Task Force for developing and making recommendations on the appropriate support methodology.¹⁴ This Task Force was composed of 17 members appointed by the Joint Board. The Rural Task Force was composed of members having experience with engineering, economic or policy concerns affecting rural ETCs, and was representative of

or just 3% of the total. *See Universal Service Administrative Company 2003 Annual Report*, Appendix B.

¹⁴ *See Federal-State Joint Board on Universal Service; Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers*, Fourteenth Report and Order, Twenty-Second Order on Reconsideration, and Further Notice of Proposed Rulemaking in CC Docket No. 96-45, and Report and Order in CC Docket No. 00-256, 16 FCC Rcd 11244 (2001) ("Rural Task Force Order").

a variety of economic, social, and geographic interests in order to ensure balance.¹⁵ Nextel Partners believes that such a process should be followed again in order to develop the “next generation” methodology that will be needed to achieve long-term sustainability of the USF in light of the ongoing technological changes that are occurring in rural areas.

Similar to the previous Rural Task Force, a new Rural Task Force should be established having membership with relevant expertise and representative of all affected parties. The membership should include representatives from both wireline and wireless ETCs. This new Rural Task Force should be tasked with making specific recommendations on a long-term forward-looking high-cost methodology (based on both wireline and wireless models) to be used for calculating support in rural areas. The Rural Task Force should work to resolve this issue by June 2006. In carrying out this work, the Rural Task Force should follow the principles discussed below.

V. Guiding Principles to be Followed in Developing a New Support Methodology.

In order to meet the goal of developing a fair, equitable and technology neutral support methodology that allows for the Congressional goals of Universal Service to be met, the following guiding principles should be followed by the Rural Task Force, the Joint Board and the Commission:

¹⁵ See *Public Notice, Federal-State Joint Board on Universal Service Announces the Creation of a Rural Task Force; Solicits Nominations for Membership on rural Task Force*, 12 Fcc Rcd 15752 (1997).

- a. **The deployment of mobile telecommunications services in rural areas serves important public interest goals and USF policies and payments should be designed to promote the continued growth of spectrum-based services in these areas.**

As noted above, access to wireless service such as that provided by Nextel Partners brings many public interest benefits to rural consumers. The cost methodology for USF High-Cost support payments in both the short and long range must support the buildout of infrastructure needed to deploy and expand these services to rural areas. At the same time, support payments to wireline carriers primarily support the existing networks.

There are key differences as to how network buildout occurs for wireline IETCs and wireless CETCs, and what it means for the respective carrier to serve an area. For wireline IETCs, serving an area means the placement of wires to a series of fixed locations within a larger geographic area; service is offered only to and from such designated network connection points within a larger general area. IETCs have built their systems over time, and adding a new customer means a relatively small incremental or piecemeal extension of existing lines. Support is needed primarily to maintain existing infrastructure.

For a wireless carrier, serving an area means placing transmission facilities (towers) in the locations that will provide coverage to areas where customers may be present. Once construction is completed, service is then provided to and from any point within those areas. Adding a customer outside of an existing coverage area means placing a new transmission tower, which has a high initial cost, as well as maintaining that tower. However, once an area is covered, adding additional customers has relatively low incremental costs until capacity limitations are exceeded. Support is needed for a

wireless carrier to build out to a threshold level to facilitate service within a coverage territory, and to maintain coverage of that territory. The methodology for calculating support payments should support *both* the wireline and wireless models of buildout and coverage.

b. USF support payments should be technologically neutral in order to promote buildout of wireless networks in rural areas.

Although cost models for buildout and service may differ between wireline and wireless carriers—i.e., between IETCs and CETCs—this does not necessarily mean that the level of support paid to each should be different, or that different methodologies should be used for calculating support. Any cost methodology ultimately selected should be technologically neutral in that it does not favor one technology over another. In fact, the Commission previously addressed this issue and rejected an approach under which support payments to all classes of carriers would not have been equal because of the “competitive harm that could be caused by providing unequal support amounts to incumbents and competitors.”¹⁶ For this reason, the Commission adopted rules providing that CETCs and IETCs receive the same level of support regardless of technology differences or respective cost differences.

In choosing a new methodology for calculating support payments in rural areas, the Task Force should work to identify a methodology that will continue to support wireline service while assisting in the buildout of wireless service in rural areas. While IETCs have been allowed to build their networks over time and have received years of support in doing so, wireless ETCs are faced with the daunting task of building a network in a short period of time to a level sufficient to compete meaningfully with the entrenched

¹⁶ See Ninth Report and Order, 14 FCC Rcd 20432 (1999) at ¶ 90.

incumbent carrier. Wireless carriers have an inherent market entry disadvantage as significant up-front investment in infrastructure is needed simply to launch coverage in a rural market.

As noted above, wireless CETCs currently do not receive support unless they actually serve a customer, while wireline IETCs receive support regardless. This is a direct result of the current embedded cost methodology under which support payments are not based on the cost of true expansion, but rather on historical investment by the ILEC. This may not be the most efficient system for ensuring that the goals of universal service are met while still protecting the long-term viability of the Fund. Whatever methodology is ultimately chosen by the new Task Force, it should allow for *buildout* of rural areas as well as system maintenance and should not disadvantage any type of technology—i.e., wireless or wireline—in favor of another.

c. Growth in the Fund Must be Managed on a Long-Term Basis.

The Universal Service Fund has succeeded in bringing basic telephone service to many rural areas at rates comparable to those offered in urban areas. However, it now faces the challenge of bringing ever-improving technologies to rural areas at rates comparable to those offered in urban areas. Wireless ETCs have taken strides to meet this challenge.¹⁷ The Commission has made clear that mobile telecommunications services, such as those offered by Nextel Partners, serve important public interest needs of rural citizens. With the expansion of wireless ETCs, rural citizens in increasing numbers are enjoying the benefits of mobility as well as choice in service provider, benefits that citizens living in

¹⁷ Unfortunately, the efforts of wireless ETCs to bring innovation and choice to the rural markets has been met with stiff resistance by incumbent LECs. For example, Nextel Partners has been denied ETC status in Texas, Nebraska, Idaho and Minnesota for reasons that are not consistent with the intent of Congress and the purpose of the Fund

urban areas have enjoyed for years. This expansion should be encouraged, not thwarted while at the same time proper and thoughtful attention should be paid to the legitimate, factually-based challenges to the size of the Fund. Establishing a Rural Task Force to develop the next generation of cost methodology for universal service support with unfettered input from both wireless and wireline carriers presents the best alternative for achieving a technology neutral, long-term solution to the growth of the Fund while advancing the laudable and necessary goals of Universal Service.

VI. Conclusion

In light of the foregoing, Nextel Partners respectfully requests that the Joint Board establish a Rural Task Force comprised of equal representation from the wireless and wireline industries. Governed by the guiding principals set out above, the Joint Task Force should develop a technology neutral cost methodology for universal service support that promotes the goals of universal service and provides a long-term, fair and equitable solution to the growth of the Fund.

Respectfully submitted,

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